

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

PETRO INDUSTRIAL SOLUTIONS, LLC
(PETRO),

Plaintiff,

v.

ISLAND PROJECT AND OPERATING
SERVICES, LLC, VITOL US HOLDING II
CO., VITOL VIRGIN ISLANDS CORP,
ANDREW CANNING and OPTIS
EUROPE, LTD.,

Defendants.

CASE NO. 1:21-CV-00312

BREACH OF CONTRACT

JURY TRIAL DEMANDED

**MOTION TO COMPEL DEFENDANT ANDREW CANNING TO SUPPLEMENT HIS
RESPONSE TO PLAINTIFF'S INTERROGATORY NO. 18**

COMES NOW, Plaintiff, by and through the undersigned counsel and respectfully requests the Court order Defendant Andrew Canning to supplement his response to Plaintiff's Interrogatory .

On July 18, 2022, Plaintiff propounded Interrogatories to Defendant Andrew Canning. **Ex. 1.** The parties filed a Joint Stipulation extending the time for Defendant Canning to answer Plaintiff's discovery to September 16, 2022. On September 16, 2022, Defendant Canning responded to Plaintiff's Interrogatories. On September 20, 2022, Plaintiff wrote to the Defendant informing him that his Interrogatories responses were insufficient. **Ex. 2.** As such, a meet and confer was held on September 29, 2022, Plaintiff waived his insufficiency claims as to Interrogatories Nos. 2, and 3. The parties were unable to resolve Interrogatories Nos. 1, 10, and 18. **Ex. 3.** On March 29, 2023 an informal hearing was held before Magistrate Judge Emile Henderson, Defendant Canning continues

Petro Industrial Solutions, LLC v. Island Project and Operating Service, LLC, et. al., Case No. 1:21-CV-00312

MOTION TO COMPEL DEFENDANT ANDREW CANNING TO SUPPLEMENT HIS RESPONSE TO PLAINTIFF'S INTERROGATORY NO. 18

Page 2

to refuse to supplement his response to Plaintiff's Interrogatory No. 18. As such, the following issue is brought before the Court.

Interrogatory No. 18: Please provide the factual basis for your denial of paragraph 53 of Plaintiff's Complaint that, "On April 15, 2021, Andrew Canning, on behalf of VITOL Defendants, sent an email to IPOS acknowledging that he did not want to have any direct communications with Plaintiff."

Response to Interrogatory No. 18: I denied the allegation because I have no recollection of sending such an email and after searching my emails could not find any such email.

Separate and apart from any email in which I allegedly said that I did not want to have direct communications with PIS, I had been instructed by IPOS that I should not communicate directly with PIS and that I should direct any communications regarding PIS to IPOS.

Defendant failed to identify who at IPOS instructed him not to communicate directly with Plaintiffs. Since IPOS is a corporate entity, it cannot speak except through persons. Parties are obligated pursuant to Federal Rules of Civil Procedure 26(e) to "reasonably amend prior responses" to discovery if the disclosure is incomplete or incorrect. Fed. R. Civ. P. 26(e)(2). "Under Fed. R. Civ. P. 26(e)(2), a party is required to supplement its discovery responses if it learns that its initial response is incomplete in a material way and the opposing party does not have the new information." *Williams v. Morton*, 343 F.3d 212, 222 (3d Cir. 2003). Further, Fed. R. Civ. P. 37(c)(1) provides that if a party without substantial justification fails to amend a prior discovery response, it may not use that evidence unless the failure is harmless.

CERTIFICATION PURSUANT TO LRCi 37.1: On March 29, 2023, Plaintiff and

Petro Industrial Solutions, LLC v. Island Project and Operating Service, LLC, et. al., Case No. 1:21-CV-00312

MOTION TO COMPEL DEFENDANT ANDREW CANNING TO SUPPLEMENT HIS RESPONSE TO PLAINTIFF'S INTERROGATORY NO. 18

Page 3

Defendant attended an informal conference on this issue but were unable to resolve Interrogatory 18.

WHEREFORE Plaintiff requests the Court order Defendant Canning to supplement his response to Plaintiff's Interrogatory No. 18, by identifying the name of the person making the statement, within ten (10) days.

RESPECTFULLY SUBMITTED
LEE J. ROHN AND ASSOCIATES, LLC
Attorneys for Plaintiff

DATED: March 31, 2023

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Petro Industrial Solutions, LLC v. Island Project and Operating Service, LLC, et. al., Case No. 1:21-CV-00312

MOTION TO COMPEL DEFENDANT ANDREW CANNING TO SUPPLEMENT HIS RESPONSE TO PLAINTIFF'S INTERROGATORY NO. 18

Page 4

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on March 31, 2023, I electronically filed the foregoing with the Clerk of the Court using the electronic filing system, which will send a notification of such filing to the following:

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